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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,237	03/03/2004	Manabu Fujita	17517	4668
23389 7590 07/18/2007 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			EXAMINER SMITH, PHILIP ROBERT	
			ART UNIT 3739	PAPER NUMBER
			MAIL DATE 07/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/792,237

Applicant(s)

FUJITA ET AL.

Examiner

Philip R. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

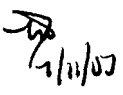
- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/25/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**Claim Rejections - 35 U.S.C. 112, Paragraph Two**

- [01] The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
- [02] The rejection of claims 10-11, 15 set forth in the Office action of 1/3/2007 are withdrawn in view of the amendments of 5/3/2007.

**Claim Rejections - 35 USC § 102**

- [03] The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
- [04] Claims 7-18 are rejected under 35 U.S.C. 102(a) as being anticipated by Fujita (2003/0085994). 
- [05] Fujita discloses a capsular medical system comprising:
- [05a] a capsular in-body unit ("capsule type endoscope 3," [0074]) having a radio communication device ("antenna 23," [0074]) which is inserted or swallowed to be introduced to the body cavity;
  - [05b] an extracorporeal device ("external unit 5," [0070]) having a communication device for communication with the in-body unit, which is arranged outside the human body;
  - [05c] at least two antennas ("multiple antennas 11a to 11d," [0070]) which are arranged near the body surface to communicate data to the in-body unit connected to the extracorporeal device;
  - [05d] a switching device ("antenna switch 45," [0071]) which switches the antennas;
  - [05e] a detecting device ("receiving circuit 33," [0075]) which detects a communication state;

- [05f] an antenna selecting device ("antenna select circuit 46," [0075]) which detects a receiving strength, in the in-body unit, of signals transmitted from at least two antennas and selects the antenna in a preferable receiving and transmitting state.
- [06] With regard to claim 7: the capsular medical system disclosed by Fujita inherently operates the switching device at a switching timing in accordance with the detected communication state ([0075]).
- [07] With regard to claim 8: Fujita discloses that the antenna selecting device performs the operation at the time interval set by a timer ("sequentially selected," [0073]; "repeated at intervals of proper period of time," [0083]).
- [08] With regard to claim 9: Fujita discloses that the detecting device performs the operation at the time interval set by a timer (as noted above) and, when a communication state is deteriorated, the antenna is switched ("the antenna 11i, through which the highest radio wave strength data can be received, must be changed," [0083])
- [09] With regard to claim 10: Fujita's invention inherently has a number  $n$  of antennas whose receiving and transmitting states are detected being less than a number  $N$  of all the attached antennas at the time of antenna switching. (Since "antennas 11i" are "switched sequentially" [0075], this is necessarily the case; where  $n=1$  and  $N="i"$ )
- [10] With regard to claim 11: Fujita discloses that the antenna whose receiving and transmitting state is checked is determined based on the antenna which currently receives data ([0075]).
- [11] With regard to claim 12: Fujita discloses a storing device for storing the receiving and transmitting state ("memory 47," 0072]), wherein, when the receiving strength data is not obtained upon

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operating the antenna selecting device, the antenna which can communicate data is checked and is selected to ensure the communication ("antenna 11i," as noted above).

[12] With regard to claim 13: Fujita discloses that the antenna selecting device operates at the time interval set by a timer (as noted above).

[13] With regard to claim 14: Fujita discloses that the detecting device performs the operation at the time interval set by a timer (as noted above) and, when a communication state is deteriorated, the antenna is switched (as noted above).

[14] With regard to claim 15: Fujita's invention inherently has a number  $n$  of antennas whose receiving and transmitting states are detected being less than a number  $N$  of all the attached antennas at the time of antenna switching. (Since "antennas 11i" are "switched sequentially" [0075], this is necessarily the case; where  $n=1$  and  $N="i"$ )

[15] With regard to claim 16: Fujita discloses that the antenna whose receiving and transmitting state is checked is determined based on the antenna which currently receives data ([0074]).

[16] With regard to claim 17: Fujita discloses that when data on the receiving strength is not obtained upon operating the antenna selecting device, the antenna which can communicate data is checked and is selected to ensure the communication ("antenna 11i," as noted above).

[17] With regard to claim 18: Fujita discloses that the detecting device selects one of the at least two antennas arranged to communicate data to the in-body unit connected to the extracorporeal device, via the switching device, in response to a detected communication state corresponding to movement of the capsular in-body unit in the body cavity. This is the process described in [0075].

#### **Response to Arguments**

[18] Applicant's arguments filed 5/3/2007 have been fully considered but they are not persuasive.

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[19] Applicant groundlessly asserts that Fujita does not anticipate claim 7. This is not persuasive, as noted above.

[20] With regard to claim 8, Applicant contends that Fujita "is not concerned with antenna selection based on state." As disclosed by [0075], this is clearly not the case:

[0075] Then, the external unit 5 receives the signals by using the receiving circuit 33 via the sequentially switched antennas 11a, 11b, . . . and 11d. The receiving circuit 33 sends a control signal to the antenna select circuit 46 so as to select an antenna 11i, which is determined to have the highest radio wave strength based on the received signals. The antenna select circuit 46 is set so as to receive signals sent from the capsule-type endoscope 3 via the antenna 11i.

[21] Fujita is specifically concerned with antenna selection based on state.

[22] Applicant reiterates previous arguments with respect to claim 9. See above.

[23] With regard to claim 10, Applicant contends that "Fujita does not include a detecting device for detecting a communication state, still less a detecting device that controls antenna switching based on a time interval set by a timer (rather than by sequential switching)." As noted above, Fujita specifically discloses a detecting device for detecting a communication state. Applicant concedes that Fujita discloses sequential switching, but denies that switching is controlled based on a time interval set by a timer. It is not clear how one can differentiate "sequential switching" from switching that is "based on a time interval set by a timer." There is inherently some interval within a sequence.

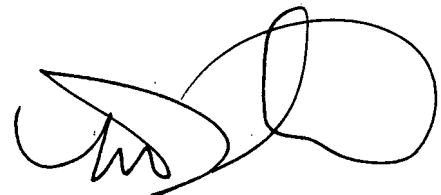
[24] Applicant reiterates previous arguments with respect to claims 12-17. See above.

### Conclusion

[25] **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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- [26] A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
- [27] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip R. Smith whose telephone number is (571) 272 6087 and whose email address is philip.smith@uspto.gov. The examiner can normally be reached between 9:00am and 5:00pm.
- [28] If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272 4764.
- [29] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**LINDA C. M. DVORAK**  
**SUPERVISORY PATENT EXAMINER**  
**GROUP 3700**